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Mr. Corbin Davis
Clerk of the Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2009-19

Dear Mr. Davis and Justices of the Supreme Court:

Thank you for allowing me the opportunity to provide my comments to the proposed change to the Motion for Relief from Judgment rule (6.502), although the deadline for posting comments has passed. I apologize that I just learned of this proposed rule change, but I sincerely believe the court would benefit from the intelligence I have to offer prior to deliberating on the proposed change.

As I understand the introduction of subsection (H), there would be an automatic bar to reviewing claims of actual innocence if the motion is not filed within one one year from the date a defendant's conviction becomes final or one year from the date on which facts supporting the claim presented in the motion could have been discovered through the exercise of due diligence.

As cases cited by the commentators in opposition to the rule change illustrate, history has proven time and again that in many cases, newly-discovered evidence exonerating one who has been wrongfully convicted cannot be discovered within such a short one-year window due to circumstances entirely beyond a prisoner's control, especially those indigent defendants who not only do not have the resources to access newly-discovered evidence from the prisons where they sit, but are also without the assistance of an attorney or an investigator who can help them access such evidence in a timely fashion and present it to the court within a year. In fact, I would go so far as to say to disregard any proposed time limitation altogether because justice cannot be measured by how well we manage our courts' dockets by slamming the door on claims of actual innocence. And justice certainly is not achieved for the victims of crime by keeping wrongfully convicted people in prison while the real perpetrators go unpunished.

The Wayne County Prosecutor's position in authoring the proposed changes as necessary to bring about finality of judgments and save judicial resources is untenable. I will get to the prosecutor's desire in urging the court to adopt this rule in a moment, but as the court very well knows, the current rule already has limitations in place that restrict the grounds for relief to which a defendant is entitled and actually moves such motions along the docket. The court rule allows for the immediate rejection of the filing of a successive motion for relief from judgment that fails to allege a retroactive change in the

law or the discovery of newly-discovered evidence since the first motion. In addition, a prosecutor is not required to file a response to a motion for relief from judgment, unless ordered to do so by the court and -- in most cases -- the courts do not order the prosecutor to file a response. Finally, there is no oral argument on such motions, again, unless ordered by the court. So, no one can dispute that the prosecutor's workloads are attributable to defending 6.500 motions.

Aside from these arguments, it might also benefit the court to have some intelligence on the Wayne County Prosecutor's position in her proposing this rule change to the court. As a member of the Detroit People's Task Force to Investigate Crime Labs, it comes as no surprise to us that the prosecutor supports the rule change in light of the fact that her office and the Detroit Police Department were recently rocked with accusations of having sent wrongfully convicted defendants to long prison terms based on faulty or otherwise falsified ballistics evidence from cases involving the Detroit Crime Lab.

To give this court some background history surrounding the Detroit Crime Lab, Wayne County Prosecutor Kym Worthy seized control of the Detroit Crime Lab in 2008 when the Michigan State Police found an error rate of 10% in an audit 200 randomly-selected cases involving ballistics evidence. Indeed, she found the error rate so intolerable that she ordered the lab closed and affirmed at that time that, "I cannot have anyone convicted on this kind of evidence." This court also recently vacated a decision by the Michigan Court of Appeals in a case challenging the ballistics evidence involving the Detroit Crime Lab on the basis of newly-discovered evidence in *People v. Nathan Emmanuel Jacobs*, Docket No. 139607 (Sept. 9. 2010).

As of today, the Wayne County Prosecutor oversees the investigations into every single case involving the ballistics division of the lab dating back to 2003. Without going into the reasons why her control over the lab is improper as it raises conflict of interest issues, I will stick to the subject at hand and demonstrate for the Court how the prosecutor is seeking to preempt a review of those defendants' cases by urging that the court adopt subsection (H)(4). After the Michigan State Police's audit in April 2008, the prosecutor announced the closure of the Detriot Crime Lab and stated that all operations were being transferred to the Michigan State Police. If adopted, subsection (H)(4) would automatically bar every wrongfully convicted defendant who may seek review because they would be held to have filed their appeal more than one year after "the date [*i.e.*, the prosecutor's public announcement in April 2008 of the lab's closure] in which the facts supporting the claim presented for relief from judgment could have been discovered through the exercise of due diligence."

Another interesting point is worth noting regarding the prosecutor's position before this Court. In May of 2009, when the issue over the crime lab scandals was taken up before the Detroit City Council, Ms. Worthy pledged to look into cases "regardless of how old the convictions are" if anyone presented to her claims of forensics tampering or mishandling of evidence involving the crime lab. Here, however, she supports an amendment to the court rule that would put a one-year limitation period on prisoners to use "due diligence" from a prison cell to come forth with claims of actual innocence through investigations for which she alone has total control. And if a prisoner failed to

read the Detroit News or Free Press in April of 2008, it will not save him from the danger of the clocks tick tock if this rule is adopted, because he would be said to have had notice from that date to know to use "due diligence" by asking for a review of his case.

The Wayne County Prosecutor's contradictory position must be viewed in light of the pledge she made to the Detroit City Council in May of 2009. What has changed since then? Is it the number of gross manifestations of injustice her conviction integrity unit has uncovered in the two years since her self-imposed control over the investigations of those adjudicated cases where falsified or faulty ballistics evidence was used at trial to secure wrongful convictions?

If adopted, subsection (H)(4) would also turn *People v. Reed,* 449 Mich 375; 535 NW2d 496 (1995) on its head. As appellate history in Michigan has shown, many cases involving the failure to present facts supporting the claims presented in a motion for relief from judgment within one year is the result of ineffective performance of counsel. The answer under such circumstances is not to punish a defendant for the incompetence and shortcomings of his trial and appellate counsel when, clearly, evidence of his innocence emerges post-appeal. The answer is to grant a motion for a new trial with a level playing field of competent counsel and a fair presentation of the evidence where a new fact finder can determine guilt or innocence.

If adopted, this proposal would work a tremendous injustice and smack at our principles of fairness and reliability of verdicts. With that said, I wish to remind this court of a commitment it made in *Carines* that the goal of judicial decision-making is to restore the public's confidence in the integrity of judicial proceedings. Rejecting the proposal gives the court an opportunity to reaffirm that principle by rejecting any rule that promotes a phantom of justice through an act of artificial finality.

For all the foregoing reasons, I respectfully ask that this Court reject the proposed amendments to MCR 6.502. Thank you very much.